

Demystifying the Council of Grand Justices

*Chien-Chih Lin**

Abstract

For better or for worse, the Judicial Yuan Interpretations have deeply shaped the contours of constitutional landscape in Taiwan. Due to judicial independence and confidentiality, outsiders do not know how the justices reached their conclusions. This situation has changed as the Judicial Yuan has declassified 83 dossiers of the decisions in recent years. All these decisions were rendered by the Council of Grand Justices. These decisions were chosen because they involved transitional justice, national mobilization, martial law, and social reconciliation. Therefore, most of these decisions are highly political in the sense that they involved the legitimacy of the authoritarian regime, the evaluation of the government's performance, and the blatant violation of constitutional rights.

Based on these documents, this paper reveals the decision-making process of the Council of Grand Justices that was shrouded in mystery. Furthermore, this paper suggests that the Justices would consider extralegal factors, such as the sociopolitical environment, inter-branch relations, and people's expectations, when they interpreted the constitution. Specifically, political factors included the government's policies, the dictator's preferences, and the political atmosphere. Social factors included the capacity of courts, transportation, the quality of legislators in local councils, and lifespan. As to inter-branch relations, this paper focuses on the interaction between the Council of Grand Justices and the Control Yuan as well as between the Council and the Taiwan Supreme Court. Finally, the dossiers revealed that the justices did take public opinion into account during their

* Research Professor, Institutum Iurisprudentiae, Academia Sinica. Professor, Graduate Institute of National Development, National Taiwan University.
E-mail: chienchihlin@gate.sinica.edu.tw

deliberation, although it might not be the decisive element. Over time, however, it has become increasingly important after democratization. Thanks to these materials, we can not only understand judicial behavior but also evaluate the role of the Council, if not any individual justice, in the history of constitutional development in Taiwan. As the dossiers demonstrate, there were some liberal votes cast even during the authoritarian period. Unfortunately, given the supermajority threshold, these liberal justices were easily outvoted.

Keywords: Council of Grand Justices, Minutes, Council of Grand Justices Act, Rules of the Council of Grand Justices, judicial behavior, transitional justice